

Date: April 8, 2011

To: Thomas J. Bonfield, City Manager

Through: Theodore L. Voorhees, Deputy City Manager
Donald F. Greeley, Director, Water Management
Jerry F. Morrone, Utility Engineering Supervisor

From: Simon Lobdell, CE III, Department of Water Management

Subject: Proposed Condemnation of Property for Elevated Water Storage Tank and Permanent Utility Easement at Angier Ave and Miami Blvd.

Executive Summary:

On June 16, 2008, City Council approved the selection of Kimley-Horn and Associates (KHA) for the site selection, design, and construction of a new 3 million gallon (MG) elevated water storage tank and booster pump station. The site selected consists of a 0.210-acre vacant lot located at 4103 Angier Ave. (Parcel #165023) and a 1.983-acre adjacent subdivided parcel at 4115 Angier Ave. (Parcel #165024).

The City has completed negotiations with the owner of Parcel #165023, and an option to purchase has been signed. Negotiations on sub-divided Parcel #165024 have reached an impasse.

Recommendations:

The Department of Water Management recommends that the City Council

1. Find it necessary, in the public interest, and for the public use and benefit, to condemn for the following interests in the property identified as Parcel Ref. No. 165024 (i) a fee simple in approximately 1.983 acres as shown on the map entitled "Preliminary Recombination and Minor Subdivision prepared for City of Durham, 4103 and 4115 South Angier Avenue" prepared by Level Cross Surveying, PLLC, and dated March 14, 2011 ; and (ii) a permanent water utility easement of approximately 14,467 sq. ft., as shown on Sheet 1 of 1 on the map entitled "Temporary Construction and Permanent Water Easement Plat on the Property of Cornwall Development Company for the City of Durham Raleigh Interconnection Project" prepared by McKim & Creed and dated November 11, 2010; and
2. Authorize the City Attorney to initiate condemnation proceedings for these purposes with a deposit into the court of \$347,000 as the City's estimate of just compensation.

The property identified for condemnation is contained in the attached Plat map and described in the attached metes and bounds description.

Background:

Three sites were evaluated for the tank and booster station in southeast Durham based on recommendations from hydraulic modeling and a distribution system storage assessment conducted by Hazen & Sawyer in July 2008. Evaluation of the sites considered ground elevation, proximity to future water demand and water mains, availability to purchase, accessibility, proximity of residential development, size and configuration, ability to equalize system pressure, and construction costs.

The selected site at the corner of Angier Ave. and Miami Blvd. was chosen for further study because of its high ground elevation and after preliminary conversations with the owners indicated a willingness to negotiate the sale of the property and if pre-design studies showed that site conditions were appropriate for the tank. On behalf of the City, KHA conducted Phase I and II Environmental Site Assessments, a wetlands investigation, and a geotechnical evaluation; prepared and obtained a Federal Aviation Administration permit; and, prepared a preliminary site review with the City. Detailed site design is over 90% complete.

The selected site consists of a 0.210 acre vacant lot located at 4103 Angier Ave. (Parcel #165023) and a 1.983-acre adjacent subdivided parcel at 4115 Angier Ave. (Parcel #165024). William H. Jeffrey is owner of Parcel #165023 and Cornwall Development Corporation (Cornwall) is owner of Parcel #165024, an overall 20.64 acre wooded parcel.

The City has completed negotiations with Mr. Jeffrey, and an option to purchase Parcel #165023 has been signed. The negotiations on the sale of the sub-divided Parcel #165024 have reached an impasse regarding compensation. The City is seeking purchase of 1.983 acres for citing the elevated storage tank, as well as approximately 14,467 square feet permanent utility easement as described in the attached meets and bounds description and plat map. The utility easement is for part of the US70 Raleigh Interconnection Project (Phase I), a 24-inch water main connecting the City of Durham and City of Raleigh water systems. This project is currently under construction.

The City was previously in negotiation with Cornwall regarding easements for the construction of the Raleigh Interconnect and the land owner wished to conclude these negotiations before discussing sale of the 1.983-acre piece associated with this project. The owner indicated their willingness to sell and the City moved forward accordingly.

The Cornwall parcel is zoned in three different zoning districts; RS-20 (residential subdivision), CG (commercial general) and CN (commercial neighborhood). The parcel is presently designated as forestland, as defined by North Carolina General Statutes. This designation affords the property owner with a significant reduction in property taxes. The remaining property will lose its status as forestland because it will fall below the 20-acre limit established by the statute as the minimum size plot that a land owner may zone as forestland. The City has increased its offer to account for back taxes associated with the loss of this

status.

Issues and Analysis:

The Department of Water Management, with the assistance of General Services Real Estate Division, has been in negotiations with Cornwall for approximately five months. The initial offer of approximately \$27,500 per acre on November 15, 2010 was based on a fee simple acquisition of the property calculated using its residential zoning status. This value was not acceptable to Cornwall.

The property owner's concerns pertaining to the purchase and the construction through the property include total offer price, impact to their property as a full parcel, loss of access to a neighboring commercial area, loss of tax preferred status as forestland, and impact to neighboring properties. Cornwall suggested the City buy a different part of Parcel #165024 to the City or to sell the entirety of Parcel #165024 to the City.

The City however, has incurred design costs well in excess of \$100,000 that cannot be recaptured in the event that the City were to move the elevated storage tank to the newly-offered portion of the parcel. This would also require a delay of at least six months to the project and void most of the currently performed design and site evaluation efforts.

General Services reviewed best available comparable property sales in the area and determined a future highest and best use value. This led to a second offer on January 6, 2011 of \$332,490.00 for the fee simple acquisition plus \$7,510.00 for the easement. The City has not received an official response from Cornwall as of the date of this memorandum. An appraisal prepared for condemnation proceedings determined that the difference in value of the overall parcel would be \$347,000.

In the event that negotiations with the property owner remain stalled, the Department of Water Management seeks to mitigate further delays to the construction of the project through use of the municipality's right to condemn property for public use and benefit as outlined in the North Carolina General Statutes Chapter 40.

Alternatives:

One alternative to condemnation of the water easement is to continue negotiations with the property owner until the owner will accept a fair market price for property. Construction of the new water line across this property would be delayed until a mutually agreeable purchase option was complete. This delay could impact the Raleigh Interconnection project through delays and change orders for multiple remobilizations of the work crews, and could result in additional pumping costs to facilitate pumping and pressurization of the new interconnection.

The other alternative to condemnation of the water easement would be the abandonment of the Raleigh Interconnection project. Abandoning this project will severely restrict the City of Durham's ability to buy water from the City of Raleigh, and will also make the construction of the southeast pressure zone very difficult. A water main installed to reach the southeast pressure zone will have to be installed in a different corridor, resulting in significantly greater costs and time delays.

With regards to the elevated water storage tank, two options are available to the City. Firstly the City could move the tank to another site in the same area or some other parcel. If this were to happen, the City would void all its current permits for the project and reinitiate a new design contract. As a result, City staff estimates a cost to the city in the range of \$500,000 to \$1,000,000 for redesign and delay costs based on the current rate of escalating steel prices. Further delays could result for any number of reasons from the redesign process. Most notably, the cost of engineering work on any particular site may exceed \$300,000 of site evaluation and detailed design.

Secondly, the City could consider abandoning the elevated water storage tank project. The City has invested significant effort and funds in the project. The project is part of the overall Capital Improvement Plant for the City and it is a critical component of building a stable and reliable water system for existing and future water demand. This is not considered a favorable option. There are no regulations from the State or otherwise that require us to move forward at this time. Nonetheless, in a historically favorable construction market, it is to the City's advantage to move forward on the tank at this time.

Financial Impacts:

Funds for land easements related to the project are allocated in 4100P007-764000-P0400. Compensation to the property owner for the property and easement is calculated to cost, \$347,000.

SDBE SUMMARY:

This item does not require review by the Equal Opportunity/Equity Assurance Department.

Attachments: Plat for Property included in Parcel ID #165024
 Meets and Bounds description for property in Parcel ID #165024
 Plat for easement located in Parcel ID #165024
 Meets and Bounds description for easement in Parcel ID #165024